

STATE OF GEORGIA

COUNTY OF FULTON

**DATA SHARING AGREEMENT BETWEEN CITY OF ATLANTA AND XYZ-  
PROPONENT COMPANY**

This AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2006 between the **XYZ-PROPONENT COMPANY**, hereinafter referred to as “**XYZ-Proponent Company**” and the **CITY OF ATLANTA, GEORGIA**, hereinafter referred to as the “**City**” as follows:

**WITNESSETH:**

WHEREAS, the **XYZ-Proponent Company** has requested sensitive data obtained from the City’s Geographic Information System for use in developing a proposal to design, build, maintain and operate a Wireless Broadband Network in the City of Atlanta, in response to FC-6006007909, Wireless Atlanta Broadband Initiative Request for Proposals (RFP).

NOW THEREFORE, in consideration of the mutual promises and covenants contained in the Agreement and in consideration of a cooperative relationship, **XYZ-Proponent Company** and the City do hereby covenant and agree as follows:

1.

The City does not insure, warrant or represent the accuracy and/or reliability of the information, data, or maps which may be provided to the **XYZ – Proponent Company**. The **XYZ-Proponent Company** hereby accepts the information, data, or maps in an “AS IS” format and expressly assumes all risks and liabilities, which are known to the City and which may become known to the City in the future, from use or from reliance upon the information, data, or maps furnished by the City to the **XYZ-Proponent Company**. The **XYZ City-Consulting Company** shall indemnify and hold the City harmless from any damages or claims whatsoever that may result from inaccuracies, omissions and or errors which may exist in any portions of the information, data, or maps supplied to **XYZ-Proponent Company**.

2.

The **XYZ-Proponent Company** hereby agrees that any information, data, or maps provided is and shall at all times remain the property of the City and may not be copied or transferred to any third party for any reason whatsoever without prior written approval of the City.

3.

The City shall provide the **XYZ-Proponent Company** a copy of information, data, and maps obtained from the City's Geographical Information System, as requested, for a fee of One Dollar (\$1.00), provided all terms, conditions and covenants stipulated in this agreement are strictly adhered to by the **XYZ-Proponent Company**.

4.

The provision of any information, data, and maps obtained from the City's Geographical Information System to the **XYZ-Proponent Company** is authorized by the City only for the limited purpose of assisting **XYZ-Proponent Company** in compiling its proposal for a city-wide wireless internet network and any use of such data for other purposes is expressly prohibited, including without limitation, its sale or transfer to non-profit or for-profit entities.

5.

**XYZ-Proponent Company's** right to possess, use, disclose, or otherwise disseminate for sole the purpose of submitting a proposal to the City shall expire on the due date for responses to the City's FC-6006007909 Wireless Atlanta Broadband Initiative Request for Proposals. This Agreement may be terminated by the City at its convenience at any time upon seven (7)days written notice to **XYZ-Proponent Company** specifying the effective date of termination of the Agreement. Additionally, this Agreement may also be terminated by the City for cause upon five (5) days written notice if **XYZ-Proponent Company** fails to comply with any term or provision of this Agreement or fails to fulfill any of its obligations under this Agreement. Upon the termination or expiration of this Agreement, the City may take possession of any data designs, licenses, equipment, materials, plans, maps, and property of any kind furnished by the City in connection with this Agreement.

6.

**XYZ-Proponent Company** acknowledges and represents that the database as well as each publication of data provided to **the Consultant** by the City, will contain the following notice and disclaimer: "The information and data contained herein have been compiled from government and non-government technical reports and from material supplied by various sources and are intended to be used for reference purposes only. Neither the City of Atlanta ("City") nor **XYZ-Consulting Company** insure, warrant or represent its accuracy. In addition, this information and data provided without warranty of any kind, either express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular use or non-infringement, nor is it warranted that the information and data will meet the user's requirements. The user is further cautioned that the information and data being made available should not be used in lieu of other contractually-cited references, specifications and/or standards, which are in effect at the time of execution of this Agreement or which may be executed in the future. Publication of the information and data is not an expression of the opinion of the **City or**

**XYZ-Proponent Company** as to the quality or durability of any structure mentioned. In no event will the **City or XYZ-Proponent Company** be liable for any claims, costs, loss, judgments or damages sought by XYZ-Proponent Company or its heirs, assigns, agents, employees, officers or third parties, including, but not limited to, lost profits, lost savings, lost opportunity or other incidental, special, or consequential damages arising from the use or inability to use the information and data being made available. Any use for advertising, promotional or any other commercial purposes of this information in conjunction with the name of the **City or XYZ-Proponent Company** is expressly prohibited.

7.

XYZ-Proponent Company is exclusively responsible for the supervision, control and use of the information, data, and maps provided and shall take all reasonable precautions to prevent unauthorized use or distribution.

8.

XYZ-Proponent Company agrees to provide, when possible and appropriate, to the City any corrections, updates or modifications to the file. The City will use any XYZ-provided updates as well as other available resources to correct and update the City's Geographical Information System on a continuing basis. However, any failure of the City to use or incorporate any update provided by XYZ-Proponent Company (or any other entity) to the City shall not result in any liability upon the City for any claims, costs, loss, judgments or damages sought by XYZ-Proponent Company or its heirs, assigns, agents, employees, officers or third parties, including, but not limited to, lost profits, lost savings, lost opportunity or other incidental, special, or consequential damages.

9.

This Agreement shall not be assigned by either party.

10.

The provisions of sections 1, 5 and 6 of this Agreement shall survive the termination or expiration of this Agreement.

11.

For the purposes of this Agreement, **XYZ-Proponent Company** is not an agent of the City, and **XYZ-Proponent Company** has no express or implied authority to act on behalf of or make any representations whatsoever on behalf of the City.

12.

Any notice or communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or three (3) days after mailing by U.S. registered mail or U.S. certified mail, return receipt requested, or hand delivered, to each party at its address as follows:

To the City:

\_\_\_\_\_  
\_\_\_\_\_

To **XYZ Proponent Company**:  
( State contact person and complete address)

\_\_\_\_\_  
\_\_\_\_\_

13.

Neither party shall be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligation and responsibilities promptly upon removal of any such cause.

14.

The parties to this Agreement hereby consent and agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

15.

The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

16.

In the event any one or more of the paragraphs or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason or in any respect, the

validity, legality and enforceability of the remaining paragraphs and provisions shall not in any way be affected or impaired thereby.

17.

The provisions of this Agreement shall (a) constitute the entire agreement between the City and **XYZ-Proponent Company** with respect to the subject matter hereof and supersede any negotiation, proposal or agreement, written or oral, prior to the date of execution of the Agreement, there being no agreements or understandings other than those written and specified herein, and (b) unless otherwise specifically recognized in this Agreement, shall be modified or amended except by written agreement duly entered into and executed by the parties with the same formality as this Agreement.

THEREFORE, IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials on the date and year first above written.

**FOR THE XYZ-CITY CONSULTING  
COMPANY:**

**FOR THE CITY OF ATLANTA**

BY: \_\_\_\_\_  
Authorized Agent, XYZ Co.

\_\_\_\_\_  
Chief Information Officer

TITLE: \_\_\_\_\_